

Gilles Andréani



*What future for
federalism?*





CENTRE FOR EUROPEAN REFORM

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1 Introduction

Ever since the start of the 1990s, the institutional debate in the European Union (EU) has seemed to become increasingly focused on the recycling of past arguments. There have been yet more ritual confrontations between the federalists and the inter-governmentalists – the proponents of a supranational Europe, and those who favour a Europe of nation-states. The first group praises the virtues of integration and of the ‘Monnet method’.¹ It wants to extend the powers of the EU, and the role of its Commission and Parliament. Their opponents, in contrast, want to keep the EU under the firm control of the member-states, which set limits to its mandate, and control its institutions through the Council of Ministers and European Council. In this inter-governmental vision of the EU, the Commission becomes merely a technical body, and the Parliament is a necessary – or perhaps not so necessary – evil.

¹ The founding father of the European Community, Jean Monnet, advocated a stealthy approach to European integration, whereby co-operation in the economic domain would tie countries together, thus paving the way for political integration, a goal which would have been much more difficult to advocate openly. Monnet, although a committed federalist, thus preferred to establish a ‘de facto solidarity’ among member-states, rather than propose an explicit ‘European federalism’.

This long-running war has had its heroes: the EU’s ‘founding fathers’ – Robert Schuman, Jean Monnet, Walter Hallstein, Joseph Luns and Jacques Delors – are rallied on one side. Against them stand Charles de Gaulle, Margaret Thatcher and their successors, the British Eurosceptics and French ‘sovereignists’ – and that unknown soldier, the Danish voter. There have been epic moments, like General de Gaulle’s empty-chair policy in 1965, or Mrs Thatcher being out-voted on the need to hold a treaty-revising conference at the Milan European Council in 1985.

The battle has its rallying cries: the *'volapük intégré'*, the bureaucratic language of the European institutions, derided by de Gaulle;

² Today's 'European Union' has evolved from the 'European Economic Community' established by the 1957 Treaty of Rome. The Treaty on European Union – which brought the current institutional construction into being – was signed at Maastricht in 1992.

the *'Europe des nations'* which he favoured and the 'super-state in Brussels' which Margaret Thatcher denounced. From the true believers comes jargon such as the *'acquis communautaire'* and the Monnet method, as well as expressions such as the *'finalité'* and 'the project', which remind us of the religious inspiration which influenced the mostly Christian democratic founders of the European Community.²

Before the 1990s, the institutional debate had a number of defining characteristics. It took place within the framework of the European institutions, through a ritual peculiar to EU decision-making, known as 'the crisis'. The 'pros' and the 'antis' (whether anti-federalist, anti-EU or anti-European) would take up their positions, blow their horns and – as in Homer – the battle would break up into a series of single combats, such as Luns versus De Gaulle, or Thatcher versus Delors. These battles assumed an intense, even epic quality, sometimes degenerating into pure hatred.

The 'antis' used to have style on their side, as well as a degree of polemical verve but, on the whole, they lost. De Gaulle did not succeed either in implementing the Fouchet plan – his scheme for an inter-governmental Union which he would have superimposed on the Community – nor in compelling his partners to reject the introduction of qualified majority voting (QMV). Similarly, Mrs Thatcher had to swallow the extension of QMV that came with the Single European Act, as well as the growth in Commission powers that accompanied the implementation of the single market.

The late 1980s were happy years for the Union, which then enjoyed increasing support from public opinion. Franco-German leadership, combined with the authority of the Delors Commission and the effects of the Single European Act, amounted to a victory for federalism, or in any event for the 'federal' institutions – the

Commission, the Parliament and the Court of Justice. But this victory was not self-evident. The word 'federal' had not yet won the day, as demonstrated by the staunch refusal of John Major's government to agree that the Europe should have a *'finalité fédérale'*, as France and Germany proposed in the negotiations on the Maastricht treaty. But the federal cause had the upper hand, and the solution which Jacques Delors later proposed to the European institutional dilemma – a 'federation of states' – corresponded exactly to the predominant mood in Europe around 1990.

Ten years later, this situation has been reversed: the huge set-piece debates on matters of principle have largely disappeared, to be replaced by perpetual bickering on more and more trivial issues. Some of the heat has gone out of the federal/inter-governmental debate, while the process of decision-making has accommodated ever-increasing doses of inter-governmentalism. The institutional debate is now two-pronged: there is both a formal process of amending the treaties, and also a public discussion about creating a European constitution, most prominently in the 2002-03 Convention on the Future of Europe. But in both these areas, questions about whether EU institutions should be federal – a theme which used to be the subject of intense debate – have become less prominent. Instead, some speculations on the future European constitution have condemned the 'Monnet method' as outdated, while at the same time floating new concepts of federalism that would significantly restrict Community competences.

Why is there this ebb in the debate on the institutional definition of Europe? Is it proof of a growing acceptance of the EU, which spares us the need to question its nature? A parallel would be the French Fifth Republic: when it started gaining widespread support, the French stopped wondering whether it was a parliamentary or a presidential system. Or is this ebbing a sign of a weakening commitment to Europe, leaving the field open to a sort of European existentialism? Since this 'Europe thing' is out there, we no longer question it – not because it is familiar and its meaning obvious, but because it is alien and meaningless. In perhaps its most sophisticated version,

euro-scepticism has given up denouncing the EU as a ‘conspiracy’ and instead accepted what exists. But at the same time it denies that European integration might be an idea for further implementation and development. If there is less to discuss, is it because the Europeans are more united in their conception of Europe, or because they have become indifferent to the whole thing?

2 Two strands to the debate

In the space of ten years, the European institutions have been subjected to three inter-governmental conferences (IGCs). These were concluded at the European Councils of Maastricht (1991), Amsterdam (1997) and Nice (2000) – three solemn occasions to decide the nature of the European institutional system, and how to improve its workings. No period in the history of European integration has been as focused on strengthening the institutions since the major founding debates of 1957-1966.

These IGCs however, have been subject to a law of diminishing returns, with each accomplishing less than its predecessor. Moreover, they have increasingly focused on details at the expense of considering the system as a whole. At Amsterdam and Nice, the negotiators were like architects trying to repair a fractured building from the inside, room by room, without ever going outside to look at the whole edifice.

The last occasion for a wide discussion on the EU’s architecture and the nature of its institutions was during the Maastricht treaty negotiations in 1991. At the time there were two discussions going on. One was on the unity of the institutional system. This debate centred around whether the new political competences to be shared by member-states and the EU institutions – in foreign policy and internal security – should be exercised within the framework of the existing Community institutions. Particularly important was whether the Commission, the Parliament and the Court of Justice would play their usual role, or whether a separate structure for decision-making between governments should be created for the new policies.

The second discussion went beyond practicalities and dealt with the ultimate nature of the European project. Should it, in the end, be called federal? Federalism was the aim at the outset of the enterprise – after all, the Schuman memorandum considered the European Coal and Steel Community to be the first stage in a ‘European federation’ – but the word had never appeared in the treaties. Should a federal goal now be made explicit?

In these discussions, France stood on the edge of both camps. In this ambiguous role, France worked out the compromise that concluded the discussion on the institutional architecture. This solution was a structure of ‘pillars’, with the Community system – including the newly prescribed Economic and Monetary Union (EMU) – flanked by two new pillars of inter-governmental co-operation, the common foreign and security policy (CFSP), and justice and home affairs (JHA). Despite Article C in the Maastricht treaty, which proclaimed the existence of the EU’s ‘single institutional framework’, the pillars leaned evidently towards a Europe of nation-states, following a French tradition as old as the Fouchet Plan. But in the second debate on the *‘finalité fédérale’*, France chose the federalist camp and lost the battle against the United Kingdom. The final text referred only to the aim of an ‘ever closer union’, borrowed from the preamble to the Treaty of Rome, without the ‘f-word’.

The institutional debate then divided: one direction went off into the realm of words and declarations of intent, with European federalism still having a place as a long-term aim and a subject for speeches. In the other direction lay real life, factual negotiation and reform, a realm from which federalism has been excluded and whose main activity is fiddling with the existing treaties. This split is between the long-term and the immediate, and between the desirable and the feasible. It also corresponds to the profound instincts of the member-states, particularly those of France. For example, French President François Mitterrand never saw any contradiction between supporting the idea of federalism at Maastricht, but at the same time defending foreign policy from the encroachment of the Community. This enabled him not only to sing the praises of a

grand idea that divided his political opponents, but also to maintain an inter-governmental and independent foreign policy that was unconstrained by deeper European integration – a vision well in line with the Fifth Republic’s heritage.

The Maastricht treaty opened the way to greater inter-governmentalism in the EU system. It marginalised the Community institutions in the new spheres of action – foreign policy and internal security. The ‘great debate’ of federalists versus inter-governmentalists ceased to drive the institutional negotiations. It became submerged in a political and academic jungle of think-pieces and speeches, where political leaders make statements ‘in their personal capacity’ but where nothing concrete emerges.³

³ It is perplexing why elected leaders choose to speak in their ‘personal capacity’, as this capacity is normally of limited interest to their voters.

This jungle has existed since the beginning of the European enterprise. But characteristic of the 1990s was the growing dissociation between the land of thinking and the sphere of negotiations and real politics. Jean Monnet floated ideas which were intended to land in the practical world. But in the 1990s politicians’ thoughts on the future of Europe seemed to evolve in a dual universe alongside the real Europe. Wolfgang Schäuble, Karl Lamers and Joschka Fischer put forward various proposals, while Edouard Balladur and Jacques Chirac responded. But at the same time it was increasingly difficult to move forward and reform the Union. There was a distinct ‘Europe of words’, where federalism was a subject for intellectual discussion. But everybody assumed this Europe was separate – and should remain so – from the Europe of practical politics.

The two key points in this politico-academic discussion were the paper produced by Wolfgang Schäuble and Karl Lamers in 1994, and the speech by German Foreign Minister Joschka Fischer at the Humboldt University in 2000. The Schäuble-Lamers paper of the then-ruling CDU/CSU parliamentary majority in the German parliament called for a “quasi-constitutional document”, based on the model of a federal state. Schäuble and Lamers proposed that the

European Parliament should have “the character of a legislative body and [enjoy] equal rights with the Council”. The Council of Ministers should be “called upon to assume, in addition to other tasks belonging essentially to the inter-governmental sphere, the role of the second chamber, that is to say of the house of member-states, with the Commission exercising the attributes of a European

⁴ Wolfgang Schäuble and Karl Lamers, ‘Reflections on European Policy’. Bonn: CDU/CSU Group in the Bundestag, 1994. government.”⁴ The competences of the Union and the member-states would be subject to the principle of subsidiarity. They would be reviewed and some would have to be given back to the member-states.

This document was less remarkable for its institutional content – which was the traditional federal model predominant in Germany – than for its political message, which was the need to maintain the Franco-German relationship in a leading role in the enlarging union. The Schäuble-Lamers paper proposed a ‘hard core’ Europe, in which a group of countries based around France and Germany would co-ordinate their policies in order to lead the Union as a whole. However, this core grouping would not establish specific institutional arrangements beyond those already operating in the broader Union.

France’s answer came in the form of an article by Edouard Balladur – then French Prime Minister – in which he wrote: “Must Europe move towards a federal system? Why revive this ideological debate? The time for this is past: an enlarged Europe, including a greater number of member-states, could not be federal ... Only flexible forms of organisation in such a group can be considered. There are only drawbacks to re-opening the discussion on federalism.”⁵ This response was evidence that the word ‘federal’ could

⁵ *Le Monde*, November 30th 1994. still have a very negative impact in France. Federalism was not at the heart of the message, which the German parliamentary majority – and, indirectly, Chancellor Helmut

Kohl – addressed to France. But in their response, the French focused on the institutional aspects of the offer, even though its main aim was to resist the centrifugal forces of enlargement by strengthening the Franco-German bond.

Was this a new episode in the perennial debate on the nature of European institutions? Not really. The exchange between the CDU/CSU parliamentary group and the French Prime Minister drew a blank and remained an isolated episode. Both sides insisted that the views they were defending were not formal positions of their governments, and the ‘federal versus inter-governmental’ dilemma was largely absent from the IGC which opened just over a year later in 1996.

The themes of federation and hard core re-emerged in a speech by German Foreign Minister Joschka Fischer in May 2000 in Berlin. But its content was significantly different. Fischer dissociated himself from the idea of transposing the institutional model of the federal state to the European level, stating that “the idea which has so far held sway, of a European federal state which would replace the nation-states and their democracies as their new sovereign, has proved to be an artificial construct”; and that the European federation must “preserve” its nation-states, not “downgrade them.” Fischer even referred to European integration as a “process that must take place on the basis of a sharing of sovereignty between Europe and the nation-state.”⁶

According to Joschka Fischer, the functions of a European government should not necessarily be entrusted to the Commission – as the

German federal model would suggest – but rather to the European Council, or, “on the basis of the present structure of the Commission, [fulfilled] by a directly elected president with wide-ranging executive powers.” Between these two options, “it is possible to envisage different intermediary formulae .” The European Parliament, for its part, should include an upper house of representatives from the national parliaments to sit alongside the present assembly. These reforms would form the basis of a constitution to establish the “European federation”, wherein the said constitution should “allocate precisely the competences between the federation and the nation-states ... reserving for the federation the

⁶ Joschka Fischer, ‘Vom Staatenverbund zur Föderation – Gedanken über die Finalität der europäischen Integration’, speech to the Humboldt University, Berlin, May 12th 2000.

essential spheres of sovereignty and only the questions which imperatively have to be settled at European level, with everything else remaining within the competence of the nation-states.”

The transition to this constitutional federation would be carried out in three stages. First, the most integrationist countries should develop ‘enhanced co-operation’ – the technical term by which, according to the Amsterdam treaty, sub-groups of member-states may move ahead in specific policy areas – between themselves. In a second phase, they should move to adopt a new basic treaty which would be the core of a constitution, “an act of deliberate political refounding for Europe.” The final stage would be “the full integration of the European federation,” including those countries which had begun in the outer circle.

In contrast to the Schäuble-Lamers paper, the characteristic feature of Joschka Fischer’s speech is that it focuses on institutions, particularly on the institutional nature of the European enterprise once fully completed. While Fischer defended a federal vision of the desired end-state of European integration, he included significant caveats: the federation should respect the personality and the role of the member-states; there should be at the European level an upper house of representatives from the national parliaments; and the European government would not necessarily be the Commission but might equally well be the European Council. These were all concessions to the sensitivities of the countries traditionally most sceptical about federalism – particularly the UK, which Fischer mentioned specifically in this regard. Nevertheless, there is a measure of continuity between his ideas and the Schäuble-Lamers paper, in that both insist on the need to defend subsidiarity and reallocate competences between the European Union and its member-states, and also for France and Germany to lead an advanced group of the most integrationist countries ahead of the others.

The French response to Fischer’s speech came in two forms: an article by Hubert Védrine, then foreign minister, in the form of questions, and a speech to the Bundestag by President Jacques Chirac on

June 12th 2000. Védrine saw the heart of the matter as being whether the discussion was about a “federation of states or traditional federalism”, implying France’s possible agreement with the former but not with the latter. Chirac warmly concurred with Fischer’s speech, and he endorsed the idea of a European constitution and the need for a hard core Europe. But Chirac suggested that the latter should not take the form of a “treaty within the treaty” as Fischer had suggested, but should be given only a minimal institutional framework – Chirac referred to a “small-scale secretariat”.

The lessons learned from the Schäuble-Lamers episode affected Fischer’s speech and also the reactions to it. The CDU/CSU paper’s traditional federalist vision had provoked a negative response from the French political class, who thus missed its main message, which was political rather than institutional, and aimed at maintaining the leading role of the Franco-German partnership. Fischer thus took precautions in defining his federal project, referring to the continuing role of the member-states. In return he gained a positive reply from Chirac.

But this episode demonstrated the schizophrenic nature of the European institutional debate. The meeting of French and German minds over the institutional nature of the future Union – symbolised by a ten-minute standing ovation for Chirac in the Bundestag – had no effect whatsoever on the course of the IGC during 2000 and its outcome at the European Council in Nice. Not only were Fischer’s vision and Chirac’s answer of no relevance to the IGC, but the mediocre Nice treaty was concluded after considerable Franco-German tensions. The Nice summit was at least a half-failure for France: Germany achieved its national aims at Nice, such as increasing the number of German Euro-MPs, relative to the other big countries, while at the same time discreetly assuming a European leadership role which should normally have been exercised by the EU presidency, which was held by France at the time. At Nice, the two countries could not have been further from the grand visions for the future of Europe that had been presented a few months earlier.

3 An implicit federation

The fact that the federal/inter-governmental debate has subsided does not mean that federalist ambitions have disappeared. The federal goal became increasingly implicit in the 1990s, taking the form of two complementary ideas. The first was that the implementation of the single currency was a 'federating' project which would give an impetus to other aspects of European integration. The euro seemed a surer way of ushering in a federal Europe than any explicitly political process. The second idea was that in an enlarged and necessarily more diluted Union, a federal hard core would be an obvious way of compensating for the centrifugal forces unleashed by enlargement.

However, it has been a strategic mistake to substitute these two ideas for an explicit defence of European federalism. As a general rule, one should not give up on defending one's convictions. And in any case both these ideas are open to question. The disappearance of overt federalism has left the institutional debate unbalanced: the federal camp has ceased to defend its beliefs for what they are – that is, a view of Europe as a political project – and thus left the field open to an inter-governmental pragmatism which enfeebles the debate and trivialises the construction of Europe.

The first idea, about the euro, has the apparent benefit of stating the obvious: economic and monetary union is a federating project that will bring in its wake an economic integration in the eurozone that stretches far beyond the single market. The combination of unified capital markets, an acceleration in mergers, and the integration of financial services will produce an economic area that is more competitive and interdependent (and less vulnerable to external shocks) than the single market alone. But the paths by which this euro-driven integration is likely to expand into the realm of politics remain ill-defined.

One possible path would be through the federal monetary authority: the European Central Bank. Many think that it must be matched by a federal institution responsible for broader macro-economic

⁷ See Pierre Jacquet and Jean Pisani-Ferry, 'Economic policy co-ordination in the eurozone: What has been achieved? What should be done?', CER, January 2001.

policies. Bound by a single currency, the countries in the eurozone have no choice but to make common macroeconomic decisions, or at least to co-ordinate their policies.⁷ A 'policy mix' for the eurozone should thus emerge. This conviction was voiced by France and specifically by Pierre Bérégovoy in the Maastricht negotiations under the

heading of 'European economic government' – a term that evoked a knee-jerk rejection from France's partners at the time. But there was a large gap between the term – which suggested genuine political integration at EU level – and the content of the French proposal, which called for a fairly modest inter-governmental mechanism for co-ordination, with the Commission playing only a minor role.

This idea has surfaced again since the creation of the Euro Group, which comprises the economic and finance ministers of the eurozone. This group embodies the political aspect of economic and monetary union *vis-à-vis* the ECB, but has no formal powers. Its ability to develop a serious decision-making capability, or to become the forerunner of an 'economic government', as originally proposed, seems doubtful.

The single currency's first four years have demonstrated that the emergence of this political dynamic is certainly not automatic. The euro has undoubtedly suffered from a lack of agreement between the member-states on which direction they wished the currency to take. However, the extent to which 'economic federalism' is desirable to ensure the success of the euro remains a matter for debate. Many have argued that in the absence of a significant common budget for the monetary union, each member-state should be allowed as broad a margin of budgetary policy as is compatible with the common aim of price stability. Therefore, there should not be an attempt to harmonise their policies. At the moment, there is no evident chain of events that would lead

automatically from the single currency to the integration, or even the co-ordination, of macro-economic policies. The modest results of the Euro Group are a function of its inter-governmental structure, and they are in no way precursors for macro decision-making powers of a federal nature in the eurozone.

Might a sense of common identity develop around the single currency, one which would help promote the political integration of Europe? It is too early to say, so soon after the launch of notes and coins. But at present, the shared possession of a symbol like a currency does not seem to be encouraging Europeans to share other elements of sovereignty. By the time economic and monetary union was achieved, all EU countries considered central bank independence to be essential for the credibility of monetary policy. The ECB's independence is a reflection of this thinking. It does not in itself constitute a quantum leap in the ability of the EU's members to engage in joint political action. Insulated from the direct exercise of governmental power, just like the national central banks, the ECB does not set an example which could help the Europeans learn how to manage other new responsibilities – such as macro-economic policy or defence – at the EU level.

The existence of a single currency may reinforce a sense of belonging to Europe, and it may make Europe more of a tangible reality. It may indirectly promote new transfers of competences to the European level too, but its existence says nothing about how to exercise powers jointly in an efficient and democratic manner – and that is the issue at the heart of the federal question.

The second hiding-place where the federal idea found refuge in the 1990s was the discussion of a 'hard core' Europe. This debate was linked to that on the creation of the euro, since up to and including the Schäuble-Lamers paper, many people assumed that the inner core of countries participating in phase III of EMU would also be the countries most dedicated to political integration.

The hard core scenario had several advantages:

- ★ it allowed the expression of an extra degree of solidarity by a group of member-states that was ready for deeper integration;
- ★ this hard core could exist in an institutional framework provided by the treaties and acceptable to the other member-states; and
- ★ participation in the euro provided a clear criterion for belonging to this deeper level of integration.

But the meeting of these two circles – the euro members and the hard core – could only be a fortuitous coincidence. Contrary to the thinking behind both the definition of the Maastricht convergence criteria and the Schäuble-Lamers paper, a wide eurozone of 12 members has emerged. In the future, the countries joining the euro will be just as disparate in their conception of Europe and their predisposition to deepen its political unity as the members of the European Union as a whole. Thus the euro circle and the political hard core will not coincide.

A European hard core, or ‘avant-garde’, may still emerge. But the broad extent of euro membership complicates the criteria by which the European commitment of its members can be evaluated. Suppose that a group of member-states recognises each other as being committed to a further deepening of political union and is ready to consent to more transfers of powers. What could be the function of this core? Could it embody a federal idea that the Union as a whole would have ceased to accept because of its enlargement and increasing diversity? In the 1990s, there were two successive answers to these questions. The first – the Schäuble-Lamers paper – envisaged the countries in the hard core acting as an informal pressure-group within a federal Union. The paper argued that they should work on a common political vision for Europe, and give a sense of direction to the whole. The hard core, an enlarged Franco-German ‘engine’,

would pull along the rest of the European machine, but for that ‘gearing’ to work, the Union as a whole had to have a federal nature, especially through the use of majority voting.

In 1995, former French president Valéry Giscard d’Estaing suggested a different vision. Starting from the centrifugal effects of enlargement, he suggested a distinction between two Europes: Europe as an economic area, dedicated to the functioning of a single market across the continent; and Europe as a power (*l’Europe puissance*), a deeper political project involving only a few countries. For the first, broader Europe, the integration provided for in the Treaty of Rome and the Single European Act would be enough, but the second would be federal or ‘federative’. What Giscard proposed would be no longer an inter-governmental core in a federal Europe, but rather a federal pole within a loosely knit Union.

This conception is not very far from that defended by Joschka Fischer, when he suggested a ‘treaty within the treaty’.⁸ After deepening their solidarity through enhanced co-operation, a group of member-states would conclude this treaty as a forerunner of the constitution for a future European federation. They would constitute a ‘centre of gravity’ which the others would gradually join. As Giscard had imagined, the federal Europe would thus be rebuilt from within, by a small group of members who would not be satisfied with the dilution of the European political project.

⁸ *This expression was originally used by Jacques Delors, who had suggested giving a formal legal base to an ‘avant-garde’ composed of the six founding members (the Benelux countries, Germany, France, Italy). But Delors seems later to have moved towards an informal conception of the avant-garde.*

Fischer’s vision, however, is both more dynamic and more unitary. While the former French president was satisfied with a two-speed Europe and had no regrets about the outer circle abandoning a federal vocation, the German foreign minister saw the two Europes converging in the long run into a single European federation.

It is natural that some countries should remain faithful to a more integrationist vision of the European project. It is equally obvious

that they have an interest in pooling their forces to defend that vision in the European debate. But it is not really conceivable that these countries could formally organise themselves, to constitute a federal whole with its own treaty base within the EU. Would they create a new Parliament and a new Commission? Between the existing European institutions – which are in many respects already federal – and the member-states, there is no room for such a ‘union within the Union’. Short of a merging of states, there is little room for organising such a closer grouping within the EU. If such a system were ever formalised, it might in the end look very similar to the federal link which already exists within the EU as a whole.

The idea of a federal hard core within the Union seems either utopian or pointless – not to mention the countless practical difficulties it would cause. It would be utopian if the aim was to form a quasi-federal state, because nobody anywhere in Europe wants one. But it would be equally pointless if it amounted to a slightly denser version of the existing Union, which could perfectly well take place in the current treaty framework through mechanisms of strengthened co-operation, or on its margins on the model of the Schengen agreement. The treaty within a treaty is a dead-end. This is probably what Chirac meant when, in reply to Joschka Fischer, he recognised the need for the ‘pioneer group’ of member-states to organise themselves, but in an informal manner. At the very most, they would need a small-scale secretariat.

In the end, the Schäuble-Lamers paper had best expressed the function of the ‘hard core’ within an enlarged Europe: the two authors saw it as the expression of a more intense European political will, rather than a distinct institutional framework. The condition for this political will to be effective is that the whole should remain federal, and if possible, become even more so, notably by the extension of majority voting. It is only because this condition was scarcely met by the Amsterdam and Nice treaties that the federal destiny of Europe seems uncertain today. The truth is that the EU seems to be too federal to allow the constitution of a federal sub-set within it, and not sufficiently federal to permit an informal group of countries

acting as an engine to pull the whole. When confronted with the rising waters of enlargement, neither the hard core nor the single currency can provide the Noah’s ark to which the federal destiny of Europe may be entrusted.

4 Federalism versus Europe

Ever since the beginnings of the European project, there has been a spontaneous harmony between Germany and European federalism. Before unification in 1991, West Germany was officially ‘the Federal Republic’, and Germany was the EU’s only federal state until Belgium adopted a federal constitution in 1993. For Germany, European federalism has been an outward extension of its very self, so it supported the idea wholeheartedly.

Since the early 1990s, however, this spontaneous harmony has been complicated by several factors. First, the implementation of the single market brought European scrutiny into the corporatist and less-than-competitive practices in Germany, which have long co-existed with a liberal economic discourse. These practices range from rules on the hops content in beer, to illegal subsidies to industry and the anachronistic savings-bank system, to enduring obstacles to the right of establishment of foreigners in the professions.

Second, the extension of Community competences has interfered with the prerogatives of the *Länder* – Germany’s powerful regional governments – in areas like the police and culture. Finally, popular disenchantment with Europe has risen in Germany, thriving on scepticism about the euro and criticism of the disproportionate German contribution to the EU’s budget. Since the mid-1990s, the Commission’s Eurobarometer surveys have shown that a majority of Germans consider that their country has not, or has not substantially, benefited from belonging to the European Union. This conclusion may be factually correct from the very narrow standpoint of the Community budget, but it is otherwise a historical and political fallacy.

While public sentiment has been changing, Germany's leaders have continued to display an exemplary degree of loyalty to Europe. This gap between public opinion and the political class has opened up a space for a mildly anti-European populism, which has been filled by the *Länder*. Their criticism of the EU has been fuelled by the fact that, during the long years of Kohl's pro-European chancellorship, most of the *Länder* governments were controlled by the opposition. Other factors were the encroachment of Community competences at their expense, and EU-imposed restrictions on state aids to industry. The regions' role in economic policy-making has been further diminished by the euro: although *Länder* representatives are in the majority on the board of the Bundesbank, only a national representative sits on the ECB's board.

Kohl and his successor as chancellor, Gerhard Schröder, responded to the *Länder's* rising anti-EU sentiment by stressing subsidiarity, the idea that the EU should only carry out those functions that cannot better be carried out at national or sub-national level. The two chancellors stressed in particular the idea of creating a clearer delineation between the competences exercised by the EU and by its member-states. At the December 2000 Nice summit, Schröder succeeded in putting this theme on the agenda of the next IGC, which will open in 2004. At first sight this idea appears common-sensical. But in reality it is ill-adapted to the EU's nature, and it has disrupted the harmony between German federalism and European federalism.

Any federal system faces the fundamental question of how to protect the federated entities against abuse of power by the centre. There are two sets of answers to this problem. The first aims at ensuring a watertight division between the respective competences of the federal authority and the federated states. This is the US model, in which each state is master of its own land, legislates in its own domain and has its own administration to implement its laws.

In contrast to this 'frontier federalism' is another model which can be called 'co-operative federalism'. In this model the protection of

the federated entities resides in their participation in the preparation and implementation of decisions made by the federation as a whole. This is what happens in Germany, where the *Bundesrat* – the upper chamber of the parliament – defends the *Länder* interests. The representation of the various *Länder* is related to their populations, but it is neither strictly proportional nor strictly egalitarian; it rather resembles the system of qualified majority voting in the European Union. Moreover, in many spheres of German public life, the regional administrations are responsible for applying federal law. This model is also that of the European Union: the rights of the member-states are protected by their participation in Community decision-making, and they enjoy a quasi-monopoly in the implementation of those decisions.

Things are more complicated in practice, because these contrasting federal models do not exist in their pure form in the real world. In Germany, the 'co-operative' model is predominant but it borrows elements from 'frontier federalism'. For example, Germany's Basic Law enumerates the respective competences of the *Bund* and the *Länder*, as well as the shared ones. In practise, co-operative federalism is gaining ground everywhere – even in the United States, which is the purest example of frontier federalism.

In Germany most things are a matter for discussion between the federal state and the federated entities, and so are dealt with as shared competences. Why should Germany, which so successfully practices co-operative federalism and sees its appeal growing elsewhere, advocate frontier federalism for the EU? After all, the latter is alien both to the EU system and to its own traditions. The answer is that Germany supports frontier federalism because, although co-operative federalism can protect the *Bund* against the inroads of Europe and the *Länder* from the inroads of the *Bund*, it can do nothing to protect the *Länder* from the extension of Community competence. The *Länder* are not represented at EU level, so Germany defends frontier federalism for Europe. Yet this position is perverse, for frontier federalism is contrary to the nature of German federalism and the EU institutions.

From the Schäuble-Lamers paper to the Fischer speech, the need to clarify competences in the EU – and possibly even to return some powers to the member-states – has been a consistent theme in German contributions to the debate. This has been an essential aim of their respective calls for a ‘quasi-constitution’ for the EU. But the result has been an end to the historical continuity between the German federal model and European federalism. At the political level, demands for subsidiarity and a clearer definition of competences have led Germany, the historical fulcrum of the federalist camp, to ally itself with British and Nordic euroscepticism or with Gaullist-inspired populism.

In practice, any attempt to define the EU’s competences along the lines of the Basic Law would be doomed to failure – or plunge the Community system into chaos. All the EU’s competences are to some extent shared with the member-states – this applies even to the Common Agricultural Policy and to trade policy, which have historically been competences of the Communities, but for which the member-states retain vast responsibilities (including an exclusive implementation role). On the other hand, if one consider the member-states’ ‘natural’ spheres of competence, they have decided that at least a minimal dose of EU involvement was desirable in all of them: in education the Erasmus programme of student exchanges,

⁹ *This model – often called the ‘Community method’ – can be defined as the traditional decision-making system of the EU, in which the Commission has the sole right of initiative, some decisions are taken by qualified majority voting, and the Council of Ministers cannot modify a Commission proposal except by unanimity.*

in social affairs the protection of migrant workers at the outset and later the adoption of the social chapter, and in defence the current plans for the ‘headline goal’.

European federalism is wholly co-operative and it functions by the involvement of member-states in almost all Community decisions, from the preparatory stages to implementation. The Community model is that of a joint exercise of shared competences.⁹ These are expressed in terms of aims to be achieved, not spheres of powers to be delineated. This seamless web of competences no doubt requires a measure of clarification at the margins.

But to try and resolve it by using frontier federalism is both pointless and fraught with danger. The growing distance which Germany feels between its federal model and that of the European Union has further weakened the federalist camp. The current obsession with the clarification of competences has led to constant background criticism of the Community model. This talk of clarifying competences is without end – for the problem has no solution – but has attracted widespread support, since nobody feels able to say anything against subsidiarity.

5 The rise of inter-governmentalism

During the 1990s, the federal idea lost its way in the mythical ‘federative effect of the euro’ and in the illusory ‘hard core’. In addition, the German aspiration to an impossible ‘frontier federalism’ at EU level profoundly weakened the federal idea. These circumstances are not the sole explanation of the rise of inter-governmentalism in the EU system in the 1990s – the Maastricht treaty was a major cause – but they contributed to it. The retreat of federalist ideas has allowed the Union to become increasingly inter-governmental, without much principled objection.

Today this imbalance manifests itself in many ways:

- ★ The decline in the capacity of the EU’s two principal decision-making bodies, the Commission and the General Affairs Council (the foreign ministers), to arbitrate and give general orientations to the Union.
- ★ The consequent transfer of these arbitrating and orientating roles to the European Council, which makes a poor job of them. This is because of its inter-governmental mode of decision-making, its members’ preoccupations with domestic policy, and the distraction of current events. Instead of considering major strategic issues, the European Council has ended up dealing with relative trivia, such as the security of maritime transport when a ship sinks, or with food safety when there is a new turn in the ‘mad cow’ crisis.
- ★ The Commission’s loss of authority – especially that of its president – which has been particularly damaging in the institutional debate. Since the departure of Jacques Delors, the Commission has been unable to play its unique and vital

role of embodying Community principles and of speaking for the general interest of the Union.

- ★ The Common Foreign and Security Policy has lacked direction and substance, largely because of its disconnection with external Community instruments such as trade and aid.
- ★ The multiplication, in the internal security sphere and elsewhere, of Community procedures that operate *à la carte*. For instance, the Commission and the Court of Justice are present in justice and home affairs, but they play a diminished and variable role, which contributes to the fragmentation and the complexity of the system.

These developments have been made worse by the evolution of the institutional debate. It used to be dominated by the confrontation between the federal and inter-governmental camps. But this argument has been replaced by a British-inspired pragmatism, which trivialises the debate, and by a division between small and large member-states, which corrupts it.

Europe has become ideologically more British in the 1990s. The coming to power of John Major in 1990 ended a long period of UK isolation. The new prime minister was sympathetic to the EU, famously stating that the UK had to be “at the heart of Europe” and advocating a rapidly enlarged and highly differentiated European Union. The rise of Euroscepticism within the Conservative Party prevented Major from exercising the influence which his pro-EU shift and the attractiveness of his views (particularly in the candidate countries) should have ensured him. Major’s successor Tony Blair has returned to these themes, promoting a greater degree of involvement in Europe, most spectacularly in his support for creating a European defence policy, which had long been staunchly opposed by the UK.

British pragmatism provided a conceptual framework for the decline of the Community system in the 1990s. The UK has insisted on the role of the member-states, but defended the Court of

Justice and avoided any attack on the European Parliament. It has challenged any intrusion of the Commission into the EU’s new spheres of action – foreign affairs and defence – but been less openly hostile to that institution than France. Blair’s government has been open in principle to an extension of majority voting, notably for asylum and visas, and also at the European Council level for any subject which ministers vote on by QMV. But it remains staunchly opposed to QMV on tax harmonisation or CFSP. It has advocated the use of mechanisms of peer pressure and best practice. Yet these are the apotheosis of inter-governmental impotence: a wide variety of views are debated but there is no decision-making mechanism to reconcile them. The UK has thus appeared more European, while justifying by pragmatic reason the weakening of the *modèle communautaire* and the fragmentation of EU institutions which have afflicted post-Maastricht Europe.

At the same time, the division between large and small member-states has replaced the federal/inter-governmental split in the institutional debate. The agenda of the two IGCs leading to Amsterdam and Nice – notably the re-weighting of votes in the Council and the composition of the Commission – were bound to cause a clash between the most populated member-states and the smallest ones. The large countries stressed demographic fairness, while the small defended existing rights and equality among member-states. But it is an aberration for this opposition to dominate the institutional debate, because differences of opinion about the fundamental nature of the Union and its institutions are normally equally divisive for all states, regardless of their size. In Amsterdam, the opposition between the two groups did not totally dominate the debates. At Nice, however, these divisions of opinion monopolised the discussion because the agenda focused on those subjects most likely to pit the two groups against one another, creating an unusually negative atmosphere.

This division between small and large countries is uniquely dangerous for the EU, because its smooth running depends on the repression of power relationships between member-states. Tensions between big

and small are normally resolved, as at Nice, by an extra dose of inter-governmentalism. If the large countries explicitly raise the question of the respective weights of the member-states, they invite demands for equality which are likely to prove irresistible in a democratic society like the EU. France was the large state which was frank or unwise enough to plead most openly the cause of the large countries, and was opposed by the small countries with all their force. The result of Nice was a triumph of inter-governmentalism: equality now means one commissioner per member-state, the power for all governments to block decisions in the European Council, and everyone having the right to maintain unanimous voting in the spheres which they consider most sensitive. The small countries have thus – in some ways – tended to become anti-federalist, in a defensive reaction against the encroachments of large countries.

Among the big member-states, France and the UK have traditionally been anti-federalist, while Germany is having difficulty in reconciling its own national brand with the reality of European federalism. By itself, Italy cannot make the difference, so anti-federalism wins the day. Only a clear position from the large countries in favour of strengthening the role of the Commission and broadly extending QMV could end the paralysing and psychologically destructive battle between small and large countries. But the domestic politics of the large member-states have not allowed this outcome. Above all, they no longer see the necessity, after ten years of a slow erosion of federal aspirations and the silent victory of inter-governmentalism.

6 Towards a federation of states

All the way from Maastricht to Nice and beyond, there has been a failure to think through properly what Europe should be, namely a federation of states. Such an effort would serve two purposes:

- ★ Forging a new unity in the integrationist camp, which has the natural support of a majority of the member-states, in the face of the traditional hostility to genuine institutional deepening from the UK, Sweden and Denmark.
- ★ Guiding the reform process, especially the delicate task of adjusting the institutional balance between EU institutions and among member-states.

As a result of this failure, those in favour of deepening the institutions are now divided into large and small countries. The Nice treaty mends a bit here and complicates another bit there, leaving the Union without the clarification it needs.

Why has the concept of a ‘federation of member-states’ not succeeded in providing an intellectual and political foundation for reforming the EU’s institutions? This concept would appear to be, on the face of it, an ideal synthesis between inter-governmentalism and federalism, just as it is between the French and German visions of Europe. From start to finish, the European system of decision-making revolves around the member-states. Nothing happens in the EU that is not prepared, approved and implemented by them. At the same time, the Union is federal in nature: the Commission’s prerogative to propose and to sanction, plus majority voting, the authority of Community law, and the role of the Parliament and the Court of Justice, have created a political and legal sphere which is superior to that of the member-states and whose decisions are binding on them.

But these elements which characterise the European federal order are not those of a federal state in the making. Two critical elements are lacking. First, there is no voting system which would enable the expression of a general European will. Second, in the European system, the federal level is not allowed to define its sphere of competence without the unanimous consent of the member-states. As a result, the EU is not a sovereign entity: politically, it does not proceed from a distinct polity of European citizens; legally, it cannot define its own competences. From both points of view, the legitimate source of European power resides in the consent of the member-states.

While the concept of a federation of states reflects this inescapable reality, it has not realised its unifying potential. The first reason is semantic: the knee-jerk abhorrence which the word ‘federal’ continues to arouse in countries like France and Britain. Jacques Chirac first referred to ‘the united Europe of states’ in a transparent attempt to reformulate Jacques Delors’ phrase while avoiding the dreaded word, before eventually endorsing the *‘fédération d’Etats’*. Joschka Fischer, aware of these semantic problems, explained in his Humboldt speech that “we looked for a neutral word in German in place of ‘federation’. But translated into French and English, it’s still ‘federation’; so we are resigned to it.” But there is more to it than vocabulary: the key word in the federation of states is ‘federation’ and not ‘states’. The term ‘federation’ takes us right to that unknown quantity, the ‘unidentified political object’ referred to by Jacques Delors.

The federation of states expresses the originality of the European institutional model and rules out the two notions which used to be at the centre of the institutional discussion: the confederation of member-states, subject only to inter-governmental self-discipline, and the federal state in the making with its lower house of the European Parliament, its Commission-government and its Council as an upper house of member-states. However, the federation of states resolves nothing on its own: it only helps one to avoid those two dead-ends and defines the field for reflection.

In between these two extreme views there are numerous possible options. One consists of evaluating the existing system by comparing it with an ideal federal model, and trying to force it to become closer to that model. The second consists of conceptualising what exists by examining the current workings of the EU as a kind of *sui generis* federalism – the end-product of the treaties and decades of practice – which has to be rationalised and deepened. The first of these options may well lead to proposals that are too remote from the existing institutions to be efficient. The second may provide the conceptual basis for a genuine reform of the European institutions, as long as the federal nature of the existing institutions is not denied but expressly acknowledged.

In his Humboldt speech, Joschka Fischer argued in favour of breaking with the existing EU ‘confederation’ and with the Monnet method, which worked at the outset but “has been of only limited utility for the political integration and the democratisation of Europe”. The aim, according to Fischer, should be a “European constitution” which will embody three reforms: settling the problem of democracy, the redistribution of power between the institutions, and the redefinition of competences between the member-states and EU levels. The federal model to which Fischer referred is not the traditional German one – still to be found in the Schäuble-Lamers paper – which identifies Europe’s institutions with those of a federal state in the making. Rather, the role of the government in the EU could be filled either by the European Council or by the Commission, and there could be space for a second chamber in the European Parliament to represent the member-states’ parliaments.

These last two proposals are noteworthy, not for their content, but for the change in method which they represent. Fischer deliberately breaks with previous German thinking, which referred to an ideal model of federalism (more or less identical to German federalism) to be transposed to EU level. He admits that the EU is *sui generis* and, in a gesture towards his partners – the French in particular – considers options that were previously alien to the German conception of Europe: a house of national parliamentarians, the European

Council as government of the Union, and even an elected president of the Commission. This evolution in methods leads to the possibility of a more open and realistic consideration of the nature of the European system, which is undoubtedly why France responded positively to Fischer's speech.

But Fischer has not drawn all the conclusions implied by this change in method. He is still looking for a 'government' in the EU system, and he still wants a clear-cut division of competences between the federal and national levels. He disparages the Monnet method which has inspired the development of the EU's current institutions. Only a deeper understanding of the original nature of European federalism can allow the institutional debate to move forward. Hopeless longings for a model which is still based largely on the federal state will not help. The final outcome of the change in method initiated by Fischer should be to view the current institutions of the EU as an original type of co-operative federalism, to highlight the functions they fulfil, and to search for ways of making them work better.

The Community decision-making model is based on the interaction between a form of representation of the common interest – the Commission – and the member-states represented within the Council. Neither has any realistic prospect of becoming the EU 'government', but together they can carry out the equivalent of the governmental function in a state system.

How can the efficiency of this 'team leadership' be improved? How can the interaction between common interest and national representatives be reconstituted at the level of the European Council? How can we avoid it becoming an appeal court for the Council of Ministers – and an inefficient one at that? Should it be chaired by the president of the Commission? How can the efficiency and the authority of the Commission be restored as the most original and vital element of the system? How to achieve a balance between the legitimacy conferred on it by the member-states in appointing commissioners, and that resulting from the investiture and possible

censure of the Commission by the Parliament? To what extent should the powers and political profile of its president be reinforced? The president's profile must not be that of the leader of a 'European government', but the Commission cannot remain as weak as it is at present without damaging the institutional balance.

Since the implementation of the single market, the chief activities of the Union have evolved. It has shifted from the production of formal norms which are then implemented by the member-states, to the implementation of policies shaped concurrently by the Union and its members (such as foreign policy, or economic and monetary union). The Community system is well adapted to norm-creating activities, but can it evolve into a suitable international actor, able to produce policies rather than norms? How should the Union and member-states share responsibilities for the implementation of these new policies?

These questions and many similar ones should be the real matter for the European institutional debate, rather than arguments over whether the Commission or the European Council should embody the 'government' of the future European federation. Neither will, nor should. What is needed is a deepening of the Community method and its adaptation to the demands of an enlarged Union and new tasks. At the end of the day, the Europeans should not eschew the federal/inter-governmental debate. At the same time, they should try and save the original federal bond which still exists after 50 years, and which the decline in Community spirit, the inter-governmental drift, and complacency in face of the enlargement have weakened over the past ten years. Europe's leaders do not need to invent a European federation, but they should return to the sources of Community federalism, and adapt them to the realities of today.

7 Is the Convention Europe's last hope?

For all their mistakes and lack of ambition since the early 1990s, Europe's leaders seem – at long last – to be taking a more constructive and realistic approach to the issue of European institutions. After the embarrassment of the Nice summit, they appear to have realised that their performance was failing to produce the kind of institutional reforms that Europe needs. So at the Laeken summit in December 2001, the European Council decided to pursue a new method for bringing about reform, that of the Convention.

Beginning its work in March 2002 under the chairmanship of former French president Valéry Giscard d'Estaing, the Convention brings together representatives of governments, the Commission, the European Parliament and national parliaments. There are delegates from the 13 candidate countries as well as the 15 existing members. The Convention is a qualitatively different process from any other that has previously dealt with institutional reform. In contrast to the IGCs, the Convention allows a genuinely open debate, which member-states cannot control. As of now, nobody can foretell its conclusions.

The Convention has a mandate to tackle broad questions, including:

- ★ How is the division of competences between the Union and the member-states to be organised?
- ★ How can the respective tasks of the European institutions be better defined?
- ★ How can the coherence and efficiency of the Union's external action be improved?

★ How can the Union's democratic legitimacy be strengthened?

The Convention is expected to reach its conclusions by the summer of 2003 and to forward them to the European Council. What the Convention produces will certainly serve as the basis for the IGC that is due to begin in 2004. And it is likely that the Convention's report will make an impact on the results of that IGC. Because many of the participants in the Convention are politicians who are firmly rooted in their national political systems, it will be very hard for EU governments to dissociate themselves from its substantive conclusion.

Up until the summer of 2002, the Convention has been involved in a preliminary phase of brainstorming. Neither its agenda nor its working methods are pointing towards definite conclusions. But, encouragingly, it seems to be operating in the practical middle ground, where the EU institutional debate should belong. It has so far avoided both abstract debates on the nature of the Union, and the minute tinkering with existing treaty provisions which plagued the Amsterdam and Nice IGCs.

Giscard d'Estaing summed up the general trend of the debate in July 2002.¹⁰ The Convention is not calling for internal Community competences to be increased, but it does want external policies to be made more effective. As Giscard observes, the Convention seems more concerned with the clarity, efficiency

¹⁰ *'La convention, dernière chance de l'Europe', Le Monde, 23rd July 2002.*

and legitimacy of EU activities than with achieving a quantum leap in integration. The Convention may also distinguish, within the EU treaties, those parts which are concerned with the competences and workings of EU institutions from the more detailed provisions. It will probably try to consolidate the former into some form of 'constitutional treaty'.

The Convention will think of ways of giving the EU a more credible and effective leadership, although the specifics remain unclear. The idea of the European Council appointing an 'EU president' as a full-

time leader has won support from some big-country leaders, including Jacques Chirac, Tony Blair and Jose María Aznar, in addition to Giscard himself and Giuliano Amato, one of the deputy chairmen of the Convention. The fact that such a proposition is on the table reflects the decline in authority of the Commission, and the progress of inter-governmentalist attitudes over the past decade. However, the smaller countries remain hostile to the idea, fearing that it would weaken the Commission. As a result, the Convention may not endorse the idea of an EU president, based in the Council.

This argument about EU presidents has revived the dreaded divide between small and large countries, as well as that between federalists and inter-governmentalists. The former in both groups favour the Commission as the natural leader of Europe's external policies, and the latter the European Council, or some personality emanating from it. In order for Giscard to prevent the re-emergence of these fault lines, he will require more than his undeniable intellectual authority and manipulative talents. There will need to be much clear thinking about the existing EU institutions, the acknowledgement of their federal character, albeit an original one, and an attempt to try and improve them rather than fundamentally alter their balance.

There are some hopeful signs, even if they are not all obvious. Some will doubtless regard the Convention as yet another instance of the progressive withering of the federalist idea that has been evident since the early 1990s. The general trend of the debate has so far seen the federalists on the defensive and the inter-governmentalists taking the initiative, as with their idea of a European Council president. The only contribution with a clear federalist undertone, that which Romano Prodi tabled on behalf of the Commission in May, advocated the communitisation of foreign policy (but not of defence): the Commission would gain an exclusive right of initiative, and QMV would become the rule. But the Prodi proposal met with a very cool reception, including from some within the Commission.

Furthermore, the Convention's debates have focused more on streamlining than on expanding EU competences, and on protecting

the member-states (and their regions) from the encroachment of Community law and institutions. Examples include the proposal to give a firmer legal basis for the enforcement of the subsidiarity principle; the idea of an article stating that competences not expressly given to the Union would be reserved to the member-states; and the

¹¹ This article allows the EU to act in new fields, in the furtherance of its policies, so long as the member-states give their unanimous approval.

suggestion that Article 308 (formerly Article 235 of the EC Treaty), which is widely (and incorrectly) seen by Eurosceptics as an instrument for extending EU competences by stealth, should be revised.¹¹

The history of European integration, however, is full of surprises, and the Convention may yet prove to be another example. The irony is that the Convention – whose agenda is distant from and in some ways a reaction to the traditional European federalist creed – is nevertheless a uniquely independent and potentially integrative process. The member-states do not control the Convention. There are hopeful signs among the delegates of the emergence of a collective spirit of dedication to their constitutional task, and even of loyalty to the values of Europe *communautaire*.

Even the representatives of the future EU members seem to have been touched by this spirit. They have blended quite harmoniously with the group of current members. They are not very keen on the idea of a European Council president, seeing an inter-governmental Europe as one that would be dominated by the big countries. And they instinctively tend to support the Commission, believing that it is their friend and protector against the big countries.

It is perhaps wishful thinking of Giscard d'Estaing to compare this spirit to that which manifested itself at the Constitutional Convention in Philadelphia in 1787, or within the French constituent assembly of 1789, as he did in his article in *Le Monde* in July 2002. But while that comparison may be exaggerated, it nevertheless reflects the fact that the Convention members are an independent group, enjoying a broad legitimacy, and that no one – and least of all European governments – can tell them what direction

they should go in. Thus, while in one sense federalism may appear to have departed through the Convention's door, it may be coming back through the window.

8 Conclusion

If the Convention manages to deal with the EU's institutional problems in a constructive manner, as suggested above, the question of a European constitution should become of secondary importance – more a problem of vocabulary than of substance. The word 'constitution' suggests a qualitative leap in integration, even a change in the nature of European integration. But the deepening and renovation of the Community method does not require such a move. Jean-Claude Piris (Director-General of the Legal Service of the Council of the European Union) has set out the arguments against the elaboration of a constitution for the European Union, convincingly and in depth.¹² A constitution could be either a treaty signed by national governments, under another name, or else it could emanate from a constituent authority that was distinct from the unanimity of member-states. Its purpose would then be to express a European sovereignty, but that is in reality non-existent. In the first hypothesis, which appears to be one the Convention is likely to follow, a 'constitutional treaty' would appear to serve little purpose. The second hypothesis would be a utopia.

¹² Jean-Claude Piris, 'Does the European Union have a Constitution? Does it need one?', lecture given to Harvard Law School, May 3rd 1999.

There is no easy way out of the European institutional debate. The only way to advance is to think about what exists; to think of the EU as a novel federal system; to understand the checks and balances it incorporates and to transpose them into its new spheres of activity; to correct the drift provoked by ten years of rising inter-governmentalism; and to protect against the further drift which enlargement could cause.

The conditions for this approach are not fully met at present because the balance of power between the proponents of a Europe

of member-states and those in favour of a federal Europe has deteriorated over the past ten years. Ambiguous, out of touch with the reality of the EU, and often the source of somewhat impractical plans, the federalist inspiration is nevertheless the driving force behind the European venture. Without it, the Union would be just an international organisation like any other. Whether one believes in it or not, federalism is essential for the construction of Europe.

We should hope that the limits of the inter-governmental method – more obvious than ever in the wake of Nice – produce a recovery of the federal camp and, above all, a reorientation of the energies within it. The federalists should flee from visions of the future, constitutions and treaties within treaties. They should abandon the illusion that the euro or the hard core will silently come to the rescue of the federal cause. They should instead return to the sphere of real policy, where federalists can squarely confront their opponents on defending and reforming the Community system. The Convention presents them in this respect with what may be their last chance, to quote from the title of Giscard d'Estaing's article cited above.

In the fable of *Le laboureur et ses enfants*, (The Poughman and his Sons) by La Fontaine, the dying ploughman confides to his children that a treasure is buried in a field. Having ploughed the field in search of the treasure, to no effect, the children go back to their father, who reveals the true nature of the treasure to be found in the field. Their hard work has left it ready to be sown, from which they may expect real and well-deserved wealth.

So too in Europe, federalism is digging in vain in search of a non-existent treasure – the European federation of tomorrow – while its real wealth lies in the federal compost of the founding treaties and the Community method. But as in the fable, it is the illusion of the treasure that stimulates the real effort which produces the wealth. We cannot demand that European federalism abandon its dreams, but we can ask it to reinvigorate the institutional debate in explicit opposition to the centrifugal forces which threaten Europe.



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What future for federalism? *Gilles Andréani*

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The views expressed in this paper are the author's own and do not necessarily reflect those of the French government.

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